

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF FOUNTAIN HILLS

THIS AGREEMENT is entered into June 13, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF FOUNTAIN HILLS acting by and through its MAYOR and TOWN COUNCIL (the "Town")

### I. RECITALS

1 The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2 The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3 Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads, the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings

4 Such project within the boundary of the Town has been selected by the Town; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

5 The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended

NO. 26075  
Filed with the Secretary of State  
Date Filed: 06/13/03

Janice K. Brewer  
Secretary of State

By: Danny Gruenewald

6. The Town, in order to obtain federal funds for the construction of the project, is willing to provide Town funds to match federal funds in the ratio required or as finally fixed and determined by the Town and FHWA, including actual construction engineering and administration costs (CE).

7. The work embraced in this agreement is the construction of a bike path, and the estimated costs are as follows.

Estimated Construction Cost:	\$410,250 00
5% Contingency:	\$ 20,513 00
Estimated subtotal Construction Cost:	\$430,763 00
15% Construction Engineering Cost:	\$ 64,614 00
TOTAL ESTIMATED CONSTRUCTION COST:	\$495,377 00
Shared Federal-Aid Safety Funds @ 94.3%:	\$440,000 00
Shared Town of Fountain Hills Funds @ 5.7%:	\$ 26,596 00
Estimated Additional Town of Fountain Hills Funds @ 100%:	\$ 28,781 00
Estimated Total Town of Fountain Hills Funds:	\$ 55,377 00

\*Includes Construction Engineering at 15% and Change Orders at 5%.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows.

## **II. SCOPE OF WORK**

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction, the Town will and does hereby designate the State as authorized agent for the Town. The State hereby agrees to be authorized agent for the Town, and with the aid and consent of the Town and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of the Town and the FHWA, enter into a contract with a firm on behalf of the Town to whom the award is made for the construction of the project; such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the Town and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation. The State will enter into a Project Agreement with FHWA on behalf of the Town covering the work embraced in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the Town will be responsible for any overage.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the Town shall be obligated to incur and will pay for said increased costs.

2. Prior to the solicitation of bids, the Town shall deposit funds with the State in the amount determined to be necessary to match federal funds in the ratio required.

3. The Town shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

4. The Town shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby

certifies that all obstructions and encroachments have been or will be removed there from, prior to the start of construction.

5. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

6. Upon completion of construction, the Town shall provide for, at its own costs and as an annual item in its budget, proper maintenance will be provided, all in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and Town, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue – Mail Drop 616E  
Phoenix, AZ 85007  
FAX (602-712-7424

Town of Fountain Hills  
Town Manager  
16836 East Palisades Boulevard,  
Fountain Hills, AZ 85269

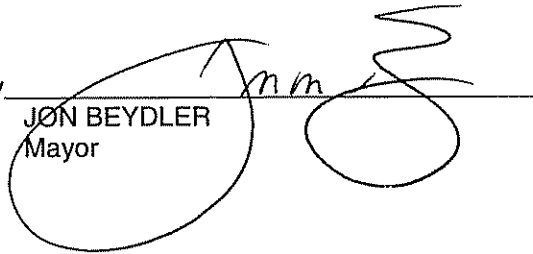
9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**TOWN OF FOUNTAIN HILLS**

By

  
JON BEYDLER  
Mayor

**STATE OF ARIZONA**

Department of Transportation

By

  
SUSAN TELLEZ  
Contract Administrator

ATTEST:

By

  
BEVELYN J. BENDER  
Town Clerk

APPROVAL OF THE TOWN OF FOUNTAIN HILLS ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and FOUNTAIN HILLS, declare this agreement to in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this 6<sup>th</sup> day of May, 2003

Olivia M. N.

Attorney

RESOLUTION NO. 2003-18

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA FOR THE CONSTRUCTION OF THE SHEA BOULEVARD BIKE PATH.

**BE IT RESOLVED** BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA as follows:

SECTION 1. That the Intergovernmental Agreement between the Town of Fountain Hills and the State of Arizona for the construction of the Shea Boulevard Bike Path is hereby approved in the form attached hereto as Exhibit A and incorporated herein by reference.


SECTION 2. That the Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Agreement.

**PASSED AND ADOPTED BY** the Mayor and Council of the Town of Fountain Hills, Arizona, May 1, 2003.

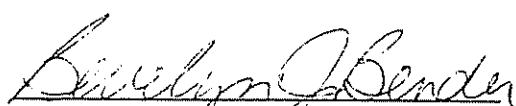
**FOR THE TOWN OF FOUNTAIN HILLS:**

  
\_\_\_\_\_  
Jon M. Beydler, Mayor

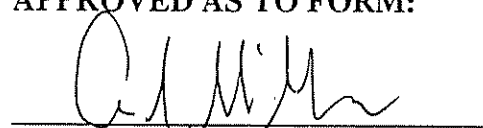
**REVIEWED BY:**

  
\_\_\_\_\_  
Timothy G. Pickering, Town Manager

**ATTESTED TO:**

  
\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Andrew J. McGuire, Town Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

TERRY GODDARD  
ATTORNEY GENERAL


**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR03-0389TRN (**JPA 02-191**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED June 3, 2003.

TERRY GODDARD  
Attorney General

  
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SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

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att.